



IN THE MATTER OF:)		
)		
RICARDO HAYNES,)		
)		
Complainant,)		
)		
and)	CHARGE NO:	2000SN0168
)	EEOC NO:	N/A
WEST TELESERVICES, INC.,)	ALS NO:	S-11449
)		
Respondent.)		

This matter comes to me on a motion by Respondent, West Teleservices, to dismiss this case due to Complainant's failure to appear at the scheduled public hearing. Complainant has filed a *pro se* response.

Respondent contends that it is entitled to a dismissal of this case as a sanction for Complainant's failure to appear at the scheduled public hearing. Complainant, however, asserts that his failure to appear at the public hearing should be excused since: (1) Respondent failed to subpoena all of the individuals who had knowledge of the facts in this case; (2) Respondent failed to tender certain discovery requests; and (3) the public hearing should have been moved from Mt. Vernon, Illinois to Chicago, Illinois.

Based on the record in this matter, I make the following findings of fact:

1. On September 21, 1999, Complainant filed a Charge of Discrimination, alleging that he was discharged from his position as a telemarketing representative after Respondent had become aware of his unfavorable military discharge.

2. The Department of Human Rights initially dismissed the Charge after having made a finding of lack of substantial evidence, but eventually vacated the dismissal after Complainant had filed a Request for Review.

3. On January 23, 2001, the Department filed a Complaint on behalf of Complainant, alleging that Respondent discharged Complainant because of his unfavorable military discharge in violation of section 2-102(A) of the Human Rights Act (775 ILCS 5/2-102(A)). The Complaint contained a "Notice of Public Hearing" indicating that the public hearing would take place in Mt. Vernon, Illinois.

4. On August 30, 2002, an Order was entered which denied Respondent's motion for summary decision and set the matter for a public hearing on October 29 and 30, 2002. The Order also denied Complainant's request to change the venue of the public hearing from Mt. Vernon to Chicago, after noting that all of the potential witnesses except for Complainant lived in the Carbondale area and that any transfer of the public hearing to Chicago would work a hardship on the Carbondale area witnesses.

5. On October 15, 2002, a status telephone conference call was conducted with the parties. During the conference call, the parties were again informed that the public hearing would begin at 9:30 a.m. on October 29, and 30, 2002, and that the public hearing would take place at the Fifth District Appellate Courthouse.

6. On October 28, 2002, Complainant telephoned the Commission's office indicating that: (1) he was in Mt. Vernon; (2) in spite of the language of the Order of October 15, 2002, he believed the public hearing was to take place on October 28, 2002; and (3) he would not be attending the public hearing the next day.

7. Subsequent to Complainant's October 28, 2002 telephone call, a clerk from the Commission informed both of Respondent's counsel, who had already begun the process of coming to Mt. Vernon from Omaha, Nebraska and San Antonio, Texas, that Complainant would not be attending the public hearing.

8. On October 28, 2002, an Order was entered which canceled the public hearing and directed Respondent to file any motion it deemed appropriate to address Complainant's failure to attend the public hearing.

9. Subsequent to the clerk's call to counsel for Respondent, one of Respondent's counsel contacted two of Respondent's witnesses from the Carbondale area in sufficient time to avoid their expenses in traveling to Mt. Vernon to attend the public hearing. A third witness, however, had already arrived in Mt. Vernon from Kingston, Jamaica by the time Respondent's counsel had contacted that witness to inform him that the public hearing would not take place.

Conclusions of Law

1. Complainant's failure to appear at the scheduled public hearing has resulted in an unreasonable delay of this proceeding.

2. The appropriate sanction for Complainant's conduct is dismissal of this proceeding.

Determination

Respondent's motion to dismiss this case with prejudice should be granted due to Complainant's failure to appear at the public hearing or provide any viable excuse for his failure to appear.

Discussion

Section 5300.750(e) of the Commission's Procedural Rules (56 Ill. Admin. Code, Ch. XI, §5300.750(e)) permits a recommendation of dismissal whenever a party engages in conduct which unreasonably delays the proceedings. Moreover, the Commission has previously found that a party's failure to appear at a scheduled public hearing can constitute unreasonable delay for purposes of issuing sanctions under section 5300.750(e). (See, for example, **Motsinger and Montfort**, ___ Ill. HRC Rep. ___ (1993SN0005, May 26, 1995).) Here, Complainant has engaged in such conduct

since he indicated that he would not be appearing at the public hearing even though he was in Mt. Vernon on the day before the scheduled beginning of the public hearing.

In his response to the motion to dismiss, Complainant again argues that the hearing should have been removed to Chicago since the travel to Mt. Vernon is a hardship for him. He additionally claims that his refusal to attend the public hearing was justified since Respondent had withheld certain evidence from him and had improperly refused to bring to the public hearing three individuals in the Carbondale area whom Complainant wanted as witnesses. None of these reasons, however, are sufficient to excuse Complainant's attendance at the public hearing. Specifically, as to the venue issue, Complainant has not explained why his interests are more important than the travel costs and inconvenience of perhaps five potential witnesses in the Carbondale area who would have been required to attend a public hearing in Chicago.

Indeed, the change of venue issue is a red herring in this case since Complainant was actually in Mt. Vernon at the time he telephoned the Commission's office to say that he was not going to attend the public hearing scheduled for the following day. In this regard, Complainant has not explained, outside of another day of hotel expense, why he could not stay an additional day to attend the public hearing. This is especially so, since the additional hotel expense is attributable only to Complainant's own misreading of the August 30, 2002 and October 15, 2002 Orders, which clearly state that the public hearing was to begin on October 29, 2002.

Moreover, as to Complainant's concern that Respondent did not tender certain documents, I note that Complainant had ample opportunity to raise any alleged discovery violations before the scheduled public hearing if they had any merit. Indeed, Complainant could have raised at the public hearing any issue regarding an alleged discovery violation if he had any intention of appearing at the public hearing. Additionally, as to Respondent's refusal to bring to the public hearing three individuals

whom Complainant wanted as witnesses, I doubt whether Respondent had a duty to produce any of these witnesses given Respondent's assertion that two of the three witnesses were no longer in its employ, and given Complainant's failure to serve Respondent with any timely notice to produce the third witness who was still in its employ. In short, Complainant could not simply boycott the public hearing merely because he was unhappy with the change of venue ruling or with Respondent's unwillingness to locate and produce three individuals whom he wanted as witnesses at the public hearing.

Finally, I note that Respondent has already incurred substantial expense in transporting a witness from out-of-the country to attend the Mt. Vernon public hearing and in preparing other witnesses for the scheduled public hearing. Under these circumstances and in the absence of a viable excuse by Complainant for not attending the public hearing, I find that dismissal of this case is an appropriate sanction for Complainant's failure to attend the scheduled public hearing. See, **Motsinger**, where the Commission similarly granted a motion to dismiss where the complainant refused to attend the scheduled public hearing.

Recommendation

For all of the above reasons, I recommend that the Complaint and the underlying Charge of Discrimination of Ricardo Haynes be dismissed with prejudice.

HUMAN RIGHTS COMMISSION

BY: _____
MICHAEL R. ROBINSON
Administrative Law Judge
Administrative Law Section

ENTERED THE 14TH DAY OF MARCH, 2003